

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 167

# **HOUSE BILL 2287**

AN ACT

AMENDING SECTION 42-2001, ARIZONA REVISED STATUTES; AMENDING SECTION 43-401, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 2, SECTION 3; AMENDING SECTIONS 43-1088, 43-1089 AND 43-1089.01, ARIZONA REVISED STATUTES; RELATING TO WITHHOLDING TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-2001, Arizona Revised Statutes, is amended to  
3 read:

4 42-2001. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Affidavits" includes forms received to report nontaxable estates.

7 2. "Confidential information":

8 (a) Includes the following information whether it concerns individual  
9 taxpayers or is aggregate information for specifically identified taxpayers:

10 (i) Returns and reports filed with the department for income tax,  
11 withholding tax, transaction privilege tax, luxury tax, use tax, rental  
12 occupancy tax, property tax, estate tax and severance tax.

13 (ii) Affidavits, reports or other information filed relating to  
14 taxable and nontaxable estates.

15 (iii) Applications for transaction privilege licenses, luxury tax  
16 licenses, use tax licenses and withholding licenses.

17 (iv) Information discovered concerning taxes and receipts by the  
18 department, whether or not by compulsory process.

19 (v) Return information obtained from the United States internal  
20 revenue service and United States bureau of alcohol, tobacco and firearms.

21 (vi) Information supplied at the special request of the department by  
22 a taxpayer which the taxpayer requests to be held in confidence.

23 (vii) Guidelines, standards or procedures that are established by the  
24 department for, or other information relating to, selecting returns or  
25 taxpayers for examination or settling or compromising any tax liability.

26 (viii) A taxpayer's identity, the nature, source or amount of the  
27 taxpayer's income, payments, receipts, deductions, exemptions, credits,  
28 assets, liabilities, net worth, tax liability, tax withheld, deficiencies,  
29 overassessments or tax payments, whether the taxpayer's return was, is being  
30 or will be examined or subject to investigation, collection or processing or  
31 any other data received by, recorded by, prepared by, furnished to or  
32 collected by the department with respect to a return or with respect to the  
33 termination, or possible existence, of liability of any person for any tax,  
34 penalty or interest imposed pursuant to this title or title 43.

35 (ix) INFORMATION SUPPLIED BY AN EMPLOYEE TO AN EMPLOYER REGARDING THE  
36 EMPLOYEE'S ELECTION TO HAVE THE EMPLOYEE'S WITHHOLDING TAX REDUCED FOR THE  
37 PURPOSES OF CONTRIBUTIONS TO QUALIFYING CHARITABLE ORGANIZATIONS, QUALIFIED  
38 SCHOOL TUITION ORGANIZATIONS OR PUBLIC SCHOOLS PURSUANT TO SECTION 43-401,  
39 SUBSECTION H.

40 (b) Does not include information which is otherwise a public record.

41 3. "Report" includes a notice of insurance payments, a request for a  
42 release of a bank account and an inventory of a safe deposit box.

43 4. "Return" includes any form prescribed by the department and any  
44 supporting schedules, attachments and lists.

1           5. "Tax administration" includes assessment, collection,  
2 investigation, litigation, statistical gathering functions, enforcement,  
3 policy making functions or management of those functions of the tax revenue  
4 laws of this state.

5           6. "Taxpayer", with respect to a joint return, means either party.  
6           Sec. 2. Section 43-401, Arizona Revised Statutes, as amended by Laws  
7 2009, chapter 2, section 3, is amended to read:

8           43-401. Withholding tax; rates; election by employee

9           A. Except as provided by subsection B of this section, every employer  
10 at the time of the payment of wages, salary, bonus or other emolument to any  
11 employee whose compensation is for services performed within this state shall  
12 deduct and retain from the compensation an amount that is determined by the  
13 department pursuant to subsection D of this section or that is equal to a  
14 percentage, determined pursuant to subsection C of this section, of the total  
15 amount of the federal income tax deducted and withheld by an employer from  
16 the total value of such wages, bonus or other emolument of an employee under  
17 the provisions of the United States internal revenue code computed without  
18 deductions for any amount withheld.

19           B. An employer may voluntarily elect to not withhold tax during  
20 December by notifying:

- 21           1. The department on a form prescribed by the department.  
22           2. The employer's employees in writing in a manner prescribed by the  
23 department.

24           C. The percentage deducted and retained under subsection A of this  
25 section:

26           1. Through April 30, 2009 shall be:

27           (a) If the employee's annual compensation is less than fifteen  
28 thousand dollars, ten per cent, nineteen per cent, twenty-three per cent,  
29 twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the  
30 employee's election pursuant to subsection G of this section.

31           (b) If the employee's annual compensation is fifteen thousand dollars  
32 or more, nineteen per cent, twenty-three per cent, twenty-five per cent,  
33 thirty-one per cent or thirty-seven per cent, at the employee's election  
34 pursuant to subsection G of this section.

35           (c) Zero per cent at the election of an employee who had no state  
36 income tax liability in the prior taxable year and expects to have no state  
37 income tax liability for the current taxable year.

38           2. Beginning from and after April 30, 2009 through December 31, 2009,  
39 if an employee's rate of withholding under paragraph 1 of this subsection  
40 immediately before May 1, 2009 was:

41           (a) Zero per cent at the election of an employee who had no state  
42 income tax liability in the prior taxable year and expects to have no state  
43 income tax liability for the current taxable year, the withholding tax rate  
44 shall remain zero per cent.

1 (b) Ten per cent, the withholding tax rate shall be increased to 11.5  
2 per cent.

3 (c) Nineteen per cent, the withholding tax rate shall be increased to  
4 21.9 per cent.

5 (d) Twenty-three per cent, the withholding tax rate shall be increased  
6 to 26.5 per cent.

7 (e) Twenty-five per cent, the withholding tax rate shall be increased  
8 to 28.8 per cent.

9 (f) Thirty-one per cent, the withholding tax rate shall be increased  
10 to 35.7 per cent.

11 (g) Thirty-seven per cent, the withholding tax rate shall be increased  
12 to 42.6 per cent.

13 3. Beginning from and after December 31, 2009 through June 30, 2010,  
14 if an employee's rate of withholding under paragraph 2 of this subsection  
15 immediately before January 1, 2010 was:

16 (a) Zero per cent at the election of an employee who had no state  
17 income tax liability in the prior taxable year and expects to have no state  
18 income tax liability for the current taxable year, the withholding tax rate  
19 shall remain zero per cent.

20 (b) 11.5 per cent, the withholding tax rate shall be decreased to 10.7  
21 per cent.

22 (c) 21.9 per cent, the withholding tax rate shall be decreased to 20.3  
23 per cent.

24 (d) 26.5 per cent, the withholding tax rate shall be decreased to 24.5  
25 per cent.

26 (e) 28.8 per cent, the withholding tax rate shall be decreased to 26.7  
27 per cent.

28 (f) 35.7 per cent, the withholding tax rate shall be decreased to 33.1  
29 per cent.

30 (g) 42.6 per cent, the withholding tax rate shall be decreased to 39.5  
31 per cent.

32 D. Beginning from and after June 30, 2010, the amount deducted and  
33 retained under subsection A of this section shall be prescribed by tables  
34 adopted by the department. On or before March 15, 2010, the department shall  
35 submit to the joint legislative budget committee a copy of the table.

36 E. If the amount collected and payable by the employer to the  
37 department in each of the preceding four calendar quarters did not exceed an  
38 average of one thousand five hundred dollars, the amount collected shall be  
39 paid to the department on or before April 30, July 31, October 31 and January  
40 31 for the preceding calendar quarter. If such amount exceeded one thousand  
41 five hundred dollars in each of the preceding four calendar quarters, the  
42 employer shall pay to the department the amount the employer deducts and  
43 retains pursuant to this section at the same time as the employer is required  
44 to make deposits of federal tax pursuant to section 6302 of the internal  
45 revenue code. On or before April 30, July 31, October 31 and January 31 each

1 year the employer shall reconcile the amounts payable during the preceding  
2 calendar quarter in a manner prescribed by the department, except that if the  
3 full amount collected and payable is paid timely to the department under this  
4 subsection, the employer may reconcile the amounts on or before May 10,  
5 August 10, November 10 and February 10 each year. The department by rule may  
6 allow and determine which employers qualify for annual payments of  
7 withholding taxes, with an annual report by the employer pursuant to section  
8 43-412, subsection B, if the qualifying employer has established sufficient  
9 payment history to indicate that the employer is current and in good standing  
10 pursuant to standards established by rule. For any business which has not  
11 had a withholding certificate for the four preceding consecutive quarters,  
12 the quarterly average shall be computed in a manner prescribed by the  
13 department.

14 F. If an employer fails to make a timely monthly payment because prior  
15 to that reporting period it reported on a quarterly basis instead of on a  
16 monthly basis, the department shall notify the employer that it is out of  
17 compliance with this section. Notwithstanding section 42-1125, the  
18 department shall not assess a penalty against an employer for failing to make  
19 a timely monthly payment if the employer had filed and remitted all taxes due  
20 on a quarterly basis and brings all filings and payments into current  
21 compliance within thirty days after being notified by the department.

22 G. Each employee shall elect the amount authorized by subsection C of  
23 this section to be withheld for application toward the employee's state  
24 income tax liability. The election provided under this subsection shall be  
25 exercised by each employee, in writing on a form prescribed by the  
26 department. The election shall be made within five days of employment. Each  
27 employer shall notify the employees of the election made available under this  
28 subsection and shall have election forms available at all times. Each form  
29 shall be completed in triplicate, with one copy each for the department, the  
30 employer and the employee. The employer shall file a copy of each completed  
31 form with the department. Any employee failing to complete an election form  
32 as prescribed shall be deemed to have elected the smallest applicable  
33 withholding percentage.

34 H. ~~Before October 1, 2005 and before July 1 OF each year thereafter,~~  
35 each employer who chooses to not withhold tax pursuant to subsection B of  
36 this section shall notify each employee that:

37 1. State income taxes will not be withheld from compensation in  
38 December.

39 2. The employee may elect to change the rate of withholding tax  
40 prescribed by this section to compensate for the resulting change in annual  
41 withholdings from the employee's compensation.

42 1. AT AN EMPLOYEE'S WRITTEN REQUEST, THE EMPLOYER MAY AGREE TO REDUCE  
43 THE AMOUNT WITHHELD UNDER THIS SECTION BY THE AMOUNT OF CREDIT THAT THE  
44 EMPLOYEE REPRESENTS TO THE EMPLOYER THAT THE EMPLOYEE WILL QUALIFY FOR AND BE  
45 ENTITLED TO UNDER SECTIONS 43-1088, 43-1089 AND 43-1089.01. THE EMPLOYEE'S

1 REQUEST MUST INCLUDE THE NAME AND ADDRESS OF THE QUALIFYING CHARITABLE  
2 ORGANIZATION, QUALIFIED SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL. WITHIN  
3 THIRTY DAYS AFTER AGREEING TO THE EMPLOYEE'S REQUEST, THE EMPLOYER SHALL  
4 REDUCE THE WITHHOLDING AMOUNT BY THE AMOUNT OF THE CREDIT, BUT NOT BELOW  
5 ZERO, PRORATED FOR THE NUMBER OF PAY PERIODS REMAINING IN THE EMPLOYEE'S  
6 TAXABLE YEAR AFTER THE EMPLOYEE MAKES THE REQUEST. IF AN EMPLOYER AGREES TO  
7 REDUCE THE WITHHOLDING AMOUNT PURSUANT TO THIS SUBSECTION, THE FOLLOWING  
8 APPLY:

9 1. WITHIN FIFTEEN DAYS AFTER THE END OF EACH CALENDAR QUARTER, THE  
10 EMPLOYER MUST PAY THE ENTIRE AMOUNT OF THE REDUCTION IN WITHHOLDING TAX FOR  
11 THAT QUARTER TO THE DESIGNATED CHARITABLE ORGANIZATION, SCHOOL TUITION  
12 ORGANIZATION OR PUBLIC SCHOOL. THESE PAYMENTS ARE CONSIDERED TO BE ON THE  
13 EMPLOYEE'S BEHALF, AND NOT THE EMPLOYER'S, FOR THE PURPOSES OF QUALIFYING FOR  
14 THE INCOME TAX CREDITS UNDER SECTIONS 43-1088, 43-1089 AND 43-1089.01.

15 2. THE EMPLOYEE IS RESPONSIBLE AND ACCOUNTABLE FOR THE ACCURACY AND  
16 THE AMOUNT OF REDUCTION IN WITHHOLDING TAX AND THE PAYMENTS TO THE CHARITABLE  
17 ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL.

18 3. THE EMPLOYER IS RESPONSIBLE AND ACCOUNTABLE TO THE CHARITABLE  
19 ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL, TO THE EMPLOYEE  
20 AND TO THE DEPARTMENT FOR ACTUALLY MAKING THE REQUIRED PAYMENTS.

21 4. WITHIN THIRTY DAYS AFTER THE END OF EACH CALENDAR YEAR, OR WITHIN  
22 FIFTEEN DAYS AFTER THE TERMINATION OF EMPLOYMENT, THE EMPLOYER MUST FURNISH  
23 TO EACH ELECTING EMPLOYEE AND TO THE DEPARTMENT A STATEMENT OF THE AMOUNT  
24 WITHHELD AND PAID ON BEHALF OF THE EMPLOYEE DURING THAT YEAR.

25 Sec. 3. Section 43-1088, Arizona Revised Statutes, is amended to read:

26 43-1088. Credit for contribution to charitable organization  
27 that provides assistance to the working poor;  
28 definitions

29 A. For taxable years beginning from and after December 31, 1997, a  
30 credit is allowed against the taxes imposed by this title for voluntary cash  
31 contributions made by the taxpayer OR ON THE TAXPAYER'S BEHALF PURSUANT TO  
32 SECTION 43-401, SUBSECTION H during the taxable year to a qualifying  
33 charitable organization as determined pursuant to subsection F of this  
34 section, but not exceeding:

35 1. Two hundred dollars in any taxable year for a single individual or  
36 a head of household.

37 2. Three hundred dollars in taxable year 2005 for a married couple  
38 filing a joint return.

39 3. Four hundred dollars in taxable year 2006 and any subsequent  
40 TAXABLE year for a married couple filing a joint return.

41 B. A husband and wife who file separate returns for a taxable year in  
42 which they could have filed a joint return may each claim only one-half of  
43 the tax credit that would have been allowed for a joint return.

44 C. If the allowable tax credit exceeds the taxes otherwise due under  
45 this title on the claimant's income, or if there are no taxes due under this

1 title, the taxpayer may carry forward the amount of the claim not used to  
2 offset the taxes under this title for not more than five consecutive taxable  
3 years' income tax liability.

4 D. The credit allowed by this section is in lieu of a deduction  
5 pursuant to section 170 of the internal revenue code and taken for state tax  
6 purposes.

7 E. Taxpayers taking a credit authorized by this section shall provide  
8 the name of the qualifying charitable organization and the amount of the  
9 contribution to the department of revenue on forms provided by the  
10 department.

11 F. The credit under this section applies only to contributions to  
12 qualifying charitable organizations that exceed the total amount deducted  
13 pursuant to section 170 of the internal revenue code in the taxpayer's  
14 baseline year. The taxpayer's baseline year is:

15 1. The 1996 taxable year if the taxpayer deducted charitable  
16 contributions pursuant to section 170 of the internal revenue code in the  
17 1996 taxable year.

18 2. If the taxpayer did not deduct charitable contributions pursuant to  
19 section 170 of the internal revenue code in the 1996 taxable year, the  
20 taxpayer's baseline year is the first taxable year after 1996 that the  
21 taxpayer deducted charitable contributions pursuant to section 170 of the  
22 internal revenue code.

23 G. A qualifying charitable organization shall provide the department  
24 of revenue with a written certification that it meets all criteria to be  
25 considered a qualifying charitable organization. The organization shall also  
26 notify the department of any changes that may affect the qualifications under  
27 this section. The department shall compile and make available to the public  
28 a list of the qualifying organizations.

29 H. For the purposes of this section:

30 1. "Low income residents" means persons whose household income is less  
31 than one hundred fifty per cent of the federal poverty level.

32 2. "Qualifying charitable organization" means a charitable  
33 organization that is exempt from federal income taxation under section  
34 501(c)(3) of the internal revenue code or is a designated community action  
35 agency that receives community services block grant program monies pursuant  
36 to 42 United States Code section 9901. The organization must spend at least  
37 fifty per cent of its budget on services to residents of this state who  
38 receive temporary assistance for needy families benefits or low income  
39 residents of this state and their households. Taxpayers choosing to make  
40 donations through an umbrella charitable organization that collects donations  
41 on behalf of member charities shall designate that the donation be directed  
42 to a member charitable organization that would qualify under this section on  
43 a stand-alone basis.

1           3. "Services" means cash assistance, medical care, child care, food,  
2 clothing, shelter, job placement and job training services or any other  
3 assistance that is reasonably necessary to meet immediate basic needs and  
4 that is provided and used in this state.

5           Sec. 4. Section 43-1089, Arizona Revised Statutes, is amended to read:

6           43-1089. Credit for contributions to school tuition  
7                     organization; definitions

8           A. A credit is allowed against the taxes imposed by this title for the  
9 amount of voluntary cash contributions made by the taxpayer OR ON THE  
10 TAXPAYER'S BEHALF PURSUANT TO SECTION 43-401, SUBSECTION H during the taxable  
11 year to a school tuition organization, but not exceeding:

12           1. Five hundred dollars in any taxable year for a single individual or  
13 a head of household.

14           2. Eight hundred twenty-five dollars in taxable year 2005 for a  
15 married couple filing a joint return.

16           3. One thousand dollars in taxable year 2006 and any subsequent  
17 TAXABLE year for a married couple filing a joint return.

18           B. A husband and wife who file separate returns for a taxable year in  
19 which they could have filed a joint return may each claim only one-half of  
20 the tax credit that would have been allowed for a joint return.

21           C. If the allowable tax credit exceeds the taxes otherwise due under  
22 this title on the claimant's income, or if there are no taxes due under this  
23 title, the taxpayer may carry the amount of the claim not used to offset the  
24 taxes under this title forward for not more than five consecutive taxable  
25 years' income tax liability.

26           D. The credit allowed by this section is in lieu of any deduction  
27 pursuant to section 170 of the internal revenue code and taken for state tax  
28 purposes.

29           E. The tax credit is not allowed if the taxpayer designates the  
30 taxpayer's contribution to the school tuition organization for the direct  
31 benefit of any dependent of the taxpayer.

32           F. A school tuition organization that receives a voluntary cash  
33 contribution pursuant to subsection A shall report to the department, in a  
34 form prescribed by the department, by February 28 of each year the following  
35 information:

36           1. The name, address and contact name of the school tuition  
37 organization.

38           2. The total number of contributions received during the previous  
39 calendar year.

40           3. The total dollar amount of contributions received during the  
41 previous calendar year.

42           4. The total number of children awarded educational scholarships or  
43 tuition grants during the previous calendar year.

44           5. The total dollar amount of educational scholarships and tuition  
45 grants awarded during the previous calendar year.



6. For each school to which educational scholarships or tuition grants were awarded:

- (a) The name and address of the school.
- (b) The number of educational scholarships and tuition grants awarded during the previous calendar year.
- (c) The total dollar amount of educational scholarships and tuition grants awarded during the previous calendar year.

G. For the purposes of this section:

1. "Handicapped student" means a student who has any of the following conditions:

- (a) Hearing impairment.
- (b) Visual impairment.
- (c) Preschool moderate delay.
- (d) Preschool severe delay.
- (e) Preschool speech or language delay.

2. "Qualified school" means a nongovernmental primary school or secondary school or a preschool for handicapped students that is located in this state, that does not discriminate on the basis of race, color, handicap, familial status or national origin and that satisfies the requirements prescribed by law for private schools in this state on January 1, 1997.

3. "School tuition organization" means a charitable organization in this state that is exempt from federal taxation under section 501(c)(3) of the internal revenue code and that allocates at least ninety per cent of its annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified school of their parents' choice. In addition, to qualify as a school tuition organization the charitable organization shall provide educational scholarships or tuition grants to students without limiting availability to only students of one school.

Sec. 5. Section 43-1089.01, Arizona Revised Statutes, is amended to read:

43-1089.01. Tax credit: public school fees and contributions:  
definitions

A. A credit is allowed against the taxes imposed by this title for the amount of any fees or cash contributions made by a taxpayer OR ON THE TAXPAYER'S BEHALF PURSUANT TO SECTION 43-401, SUBSECTION H during the taxable year to a public school located in this state for the support of extracurricular activities or character education programs of the public school, but not exceeding:

- 1. Two hundred dollars for a single individual or a head of household.
- 2. Three hundred dollars in taxable year 2005 for a married couple filing a joint return.
- 3. Four hundred dollars in taxable year 2006 and any subsequent TAXABLE year for a married couple filing a joint return.

1 B. A husband and wife who file separate returns for a taxable year in  
2 which they could have filed a joint return may each claim only one-half of  
3 the tax credit that would have been allowed for a joint return.

4 C. The credit allowed by this section is in lieu of any deduction  
5 pursuant to section 170 of the internal revenue code and taken for state tax  
6 purposes.

7 D. If the allowable tax credit exceeds the taxes otherwise due under  
8 this title on the claimant's income, or if there are no taxes due under this  
9 title, the taxpayer may carry the amount of the claim not used to offset the  
10 taxes under this title forward for not more than five consecutive taxable  
11 years' income tax liability.

12 E. The site council of the public school that receives contributions  
13 that are not designated for a specific purpose shall determine how the  
14 contributions are used at the school site. If a charter school does not have  
15 a site council, the principal, director or chief administrator of the charter  
16 school shall determine how the contributions that are not designated for a  
17 specific purpose are used at the school site.

18 F. A public school that receives fees or a cash contribution pursuant  
19 to subsection A of this section shall report to the department, in a form  
20 prescribed by the department, by February 28 of each year the following  
21 information:

22 1. The total number of fee and cash contribution payments received  
23 during the previous calendar year.

24 2. The total dollar amount of fees and contributions received during  
25 the previous calendar year.

26 3. The total dollar amount of fees and contributions spent by the  
27 school during the previous calendar year.

28 G. For the purposes of this section:

29 1. "Character education programs" means a program described in section  
30 15-719.

31 2. "Extracurricular activities" means school sponsored activities that  
32 require enrolled students to pay a fee in order to participate including fees  
33 for:

34 (a) Band uniforms.

35 (b) Equipment or uniforms for varsity athletic activities.

36 (c) Scientific laboratory materials.

37 (d) In-state or out-of-state trips that are solely for competitive  
38 events. Extracurricular activities do not include any senior trips or events  
39 that are recreational, amusement or tourist activities.

40 Sec. 6. Effective date

41 This act is effective from and after December 31, 2009.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.